

**Before the
LOCAL TELEVISION LOAN GUARANTEE BOARD**

_____)
In the Matter of:)
)
Launching Our Communities' Access to Local)
Television Act of 2000)
)
Proposed Rule)
_____)

To: Jacqueline G. Rosier, Secretary
 LOCAL Television Loan Guarantee Board

EchoStar Satellite Corporation (“EchoStar”) hereby submits its comments in the above-captioned proceeding. The rules proposed by the LOCAL Television Loan Guarantee Board (“Board”) generally reflect the will of Congress to bring local broadcast signals to consumers throughout the United States. In a few respects, however, the rules as drafted would introduce unintended consequences, undermining the purpose of the statute. EchoStar believes that with a few technical changes to the proposed rule, the Board can address these issues and allow direct broadcast satellite providers like EchoStar to help realize Congress’ goals.

COMMENTS

I. The Standard for Determining Applicants’ Ability to Deliver High Speed Internet Access should be Technology-Neutral.

The proposed rules accurately reflect the will of Congress to place at the top of the selection criteria an applicant’s ability to deliver local broadcast signals. However, in implementing the statute’s secondary purpose of bringing high speed Internet access to nonreserved

and underserved homes, the draft rules place satellite providers at a disadvantage. The Board should correct this by adopting a more technology-neutral standard.

The statute establishes as the paramount selection criteria an applicant's ability to deliver local broadcast signals to households in nonserved and underserved areas. It then directs the Board to give "additional consideration to projects that also provide high-speed Internet service."¹ The draft rules implement this directive² but require applicants to describe in their certified system plan, technical analysis, and design how much bandwidth excess to the provision of local signals would be available to provide Internet service.³ Such a technical showing probably makes sense in the context of a cable system, telephone network, or other wireline architecture. In the case of satellite systems, however, it does not. The current draft rules therefore contradict the will of Congress to grant loan guarantees on a "technologically neutral basis."⁴

¹ Launching Our Communities' Access to Local Television Act of 2000, Pub. L. No. 106-553 at Title X, §1004(e)(1)(B) (Hereinafter "Local TV Act"). It should be noted that, by using the word "also" when introducing the concept of Internet service in this provision, the statute establishes that the first and second selection criteria apply to the delivery of television signals only. See Id. at §1004(e)(1)(A)(i),(ii). This is consistent with the stated purpose of the Act to provide "signals of local television stations" to households in nonserved and underserved areas. See Id. at §1002.

² See Draft Rules at §2201.18(b).

³ See Id. at §2201.11(e)(9) (applicants must provide an "identification of the net usable bandwidth, in Mb/s, that are surplus to the provision of the Local Television Broadcast Signals to be provided by the Project and that will be used to provide High Speed Internet Service...").

⁴ Local TV Act at §1001.

A cable operator typically allocates bandwidth to various functions. In a 750 MHz digital cable plant, for example, some portion of that bandwidth is devoted to video and some is devoted to data, but the cable operator offers all of its services over that single pipe. In such a case, the Board's draft rules make sense because the cable operator could easily discern which segments of its bandwidth are being used for video and which for data.

Satellite architecture is different. A satellite provider generally provides video services from one set of transponders or satellites and data from another. Satellite subscribers who wish to receive both video and data services use multiple receive antennas, or antennas capable of "viewing" multiple satellites, to receive video, audio, and data services.

The Board's proposed standard seems to overlook this distinction between satellite and wireline systems. The loan application process contemplates a discrete "Project" funded by the loan. Given the way that satellite systems provide data services, however, it is possible that the project in question would be used entirely for video services, with data services provided by other, non-project related assets.

For example, EchoStar could build a satellite only for video services which would have spot beams devoted to carriage of local broadcast signals. A loan to finance the construction of such a satellite likely would qualify for a guarantee under the draft rules. EchoStar may deliver only video services from the satellite financed with the loan, augmenting that video service with a data service provided via another satellite in our fleet. Under the existing rules, however, because the data component would not be provided through the loan project, EchoStar could not refer to such services in its application, even though it would bring data services to nonserved and underserved households.

EchoStar therefore recommends that the Board allow an applicant to refer to its entire system, not just the assets at issue in the proposed project, when describing how data services will be provided in conjunction with the proposed project. This will keep the rules technology-neutral while fulfilling Congress' goal of favoring projects that bring high speed Internet services to nonserved and underserved areas.

II. The Board Should Eliminate the Preference for Applicants who were Unable to Secure “Reasonable” Terms in Private Capital Markets.

The selection criteria adopted by the Board should implement Congress' intent to bring local broadcast signals to nonserved and underserved areas.⁵ For the most part, the Board's proposed rules track the letter and spirit of the statute. In an apparent effort to ensure that loan guarantees are awarded only to those applicants who most need funding, however, the proposed rules stray from their Congressional purpose by requiring applicants to show that they were previously unable to secure credit on similar terms from private lending institutions.⁶ While this goal arguably is consistent with statutory provisions requiring the protection of U.S. financial interests, the provision would result in loan guarantees for those parties least able to bring projects to fruition, rather than for those best able to bring services to consumers. This would be precisely the opposite result intended by Congress.

⁵ Local TV Act at §1001

⁶ Draft Rules at §§2201.11(g)(3), 2201.12(b)(v), and 2201.18(d)(2)(5)

The draft rules require applicants to document that the loan in question “would not be available on reasonable terms and conditions” without a federal guarantee.⁷ Applicants must substantiate this claim with “documentation” from at least one lending institution indicating that the Applicant was unable to obtain “substantially the same” loan on “reasonable terms and conditions.”⁸

The Board appears to be trying to award loan guarantees only to applicants who were unable to secure similar terms in the private capital markets. On its face, this appears to be reasonable. It arguably would direct the government’s loan guarantees only to those projects that could not be funded by private sources, thus restricting governmental resources and financial exposure only with respect to those applicants who need funding the most.

In practice, however, this requirement probably would undermine the central tenet of the statute: bring local television signals to nonserved and underserved areas. Well-established, large firms with high overall credit ratings and strong banking relationships generally are able to secure more favorable lending terms than are small start-up firms with little credit history. If a Fortune 500 company and a start-up firm sought funding from the same institution, that lender probably would grant more favorable terms to the Fortune 500 company. Under the current draft rules, therefore, the start-up would be better able to show that it could not secure reasonable terms, while the large firm would be less able to make such a showing. The perverse result

⁷ Draft Rules at §2201.12(b)(v). See also Draft Rules at §2201.11(g)(3) (“Evidence of lack of credit”); and §2201.18(d)(2)(v) (requiring Board to determine in writing that the “Loan would not be available on reasonable terms and conditions without a Guarantee...”).

⁸ Id.

would be that, all other things being equal, the small firm, which is less equipped to bring service to nonserved and underserved areas, would win the loan guarantee.

The statute does not call for allocating loan guarantees in this fashion. Instead, the statute grants the Board authority to promulgate provisions “consistent with the purpose” of the Act.⁹ That purpose is to “facilitate access ... to signals of local television stations” in nonserved and underserved areas.¹⁰ Moreover, the statute establishes in great detail collateral requirements and other means by which the Board must protect the financial interests of the United States,¹¹ rendering the Board’s proposed preference system unnecessary. Thus, by granting a preference to applicants who have failed to secure funds, the Board would be acting outside of its statutory authority and in fact would be undermining the statute.

Finally, the proposed rule’s standard for establishing an applicant’s need for the guarantee is vague. The Board apparently would have to determine on a case-by-case basis whether an applicant had been unable to secure a loan on “reasonable terms and conditions” and whether such loan was “substantially the same” loan as the one to which the guarantee would apply. For the reasons described above, it would be difficult at best for the Board to discern a reasonableness standard to apply equally across a wide range of firms applying for loan guarantees. EchoStar believes that the Board should strike Sections 2201.11(g)(3), 2201.12(b)(v), and 2201.18(d)(2)(5) from the final rule.

⁹ Local TV Act at §1004(b)(2)(F).

¹⁰ Id. at §1002.

¹¹ Id. at §1004(d)(3).

III. “Local Television Broadcast Signals” should Include All Local Broadcasts.

The Board’s proposed definition of “Local Television Broadcast Signals” is limited to affiliates of the four major broadcast networks (ABC, CBS, NBC, FOX, or “Big Four”).¹² The Board reasons that this definition encompasses the signals most likely to provide local news, weather, sports, and other programming of local interest.¹³ EchoStar agrees that the applicable definition should encompass stations broadcasting such programming. In practice, however, many non-Big Four broadcasters have local news, weather, and sports and therefore should be encompassed by the definition.

For example, a CBS affiliate in Jacksonville, Florida owned by the Washington Post-Newsweek station group, WJXT, recently dropped its network affiliation and became an independent station. The station retained its local news and other local programming, however, and remains among the top-rated stations in that market. Under the Board’s definition, WJXT would not be included in the definition of Local Television Broadcast Signals.

EchoStar recommends that all broadcast stations eligible for must carry, under then-applicable Federal Communications Commission rules, be included in the definition.¹⁴ While this will encompass some stations with weaker signals than their Big-Four counterparts, and some stations with little local programming, it will establish a bright-line rule for the Board that

¹² Draft Rules at §2201.1.

¹³ See “Description of Proposed Rule,” 68 Fed. Reg. 48814, 48816 (Aug. 15, 2003) (“the Board determined that it is reasonable to define a practical set of ‘Local Television Broadcast Signals’ as a set most likely to provide the local news, weather, sports and other programming of local interest that are the reason people need access to local signals”).

¹⁴ See, e.g., 47 C.F.R. §76.66 et seq.

serves to encompass any and all stations in a local market providing programming of local interest.

CONCLUSION

EchoStar believes that the draft rules largely accomplish the goals of the Local TV Act but recommends that the Board make the changes described above to ensure that satellite operators are not disadvantaged in the loan guarantee application process.

Respectfully submitted,

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